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Nona A. Bradshaw

FEDERAL COMMUNICATIONS COMMISSION

DOCKET FILE COPY ORIGINAL

In Re:)	MM DOCKET No.: 97-122
)	
GERARD A. TURRO)	File No.: BRFT-970129YC
)	
For Renewal of License)	File No.: BRFT-970129YD
for FM Translator Stations)	
W276AQ (FM), Fort Lee, NJ,)	
and W232AL (FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
Construction Permit for)	
FM Radio Station WJUX (FM),)	
Monticello, NY, Should Not)	
Be Revoked)	

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Be Revoked)	

Courtroom 1
Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
May 20, 1997

The parties met, pursuant to the notice of the
Judge, at 9:02 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

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On Behalf of WVOS (Gene Blabey and
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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

IDENTIFIED RECEIVED REJECTED

Hearing Began: 9:02 a.m.

Hearing Ended: 9:55 a.m.

1 P R O C E E D I N G S

2 JUDGE STEINBERG: Good morning. Please be seated.

3 (Brief silence.)

4 This is a prehearing conference in MM Docket
5 Number 97-122. This proceeding involves the applications of
6 Gerard A. Turro for renewal of FM translator stations in
7 Fort Lee, New Jersey, and Pomona, New York, and an order to
8 show cause why the construction permit for Station WJUX
9 (FM), Monticello, New York, which is licensed to Monticello
10 Mountaintop Broadcasting, Incorporated, should not be
11 revoked. The hearing designation order also made Universal
12 Broadcasting of New York, Incorporated, a party to the
13 proceeding.

14 Let me first take the appearances of counsel for
15 Gerard A. Turro.

16 MR. ALAN NAFTALIN: Alan Naftalin and Charles
17 Naftalin, of Koteen & Naftalin.

18 JUDGE STEINBERG: For Monticello Mountaintop
19 Broadcasting, Incorporated?

20 MR. RILEY: James Riley, of Fletcher, Heald &
21 Hildreth.

22 JUDGE STEINBERG: For Universal Broadcasting of
23 New York, Incorporated.

24 MR. RUSSO: Roy Russo and Dick Helmick, of Cohn
25 and Marks.

1 JUDGE STEINBERG: For the Chief, Mass Media
2 Bureau.

3 MR. ARONOWITZ: Alan Aronowitz, with Suzan
4 Friedman.

5 JUDGE STEINBERG: The first thing I want to talk
6 about is the pending pleadings. We have a motion to enlarge
7 issues, which was filed against Turro on May 8, 1997, by
8 Universal. A supplement was filed yesterday. I do not know
9 if you have seen that. I have it here, and what it does is,
10 it attaches Senator Torricelli and Congressman -- what is
11 the name -- Rothman's letter to the Commission of April 28,
12 1997, and the Commission's response of May 13, 1997.

13 This would extend the due date of any responses
14 to, I calculate, June 3. But if you get a different date,
15 and it has been so long since I have had to count days --

16 MR. ALAN NAFTALIN: We should have no trouble
17 meeting that date.

18 JUDGE STEINBERG: Okay. So, I just wanted to say
19 that those are the only things I have pending in front of
20 me.

21 Does anybody know of anything else?

22 MR. ARONOWITZ: Your Honor, just to clarify, the
23 Bureau's response was filed yesterday, I believe.

24 JUDGE STEINBERG: If you want to supplement it,
25 you can supplement it.

1 MR. ARONOWITZ: But --

2 JUDGE STEINBERG: I have not gotten it yet.

3 MR. ARONOWITZ: I think you mentioned that we
4 filed 5-13, and I just to make sure that it is 5-19, so it's
5 the right pleading. Just to make sure that --

6 JUDGE STEINBERG: Oh.

7 MR. ARONOWITZ: -- you have what we hopefully did.

8 JUDGE STEINBERG: If you filed it yesterday --

9 MR. ARONOWITZ: Correct.

10 JUDGE STEINBERG: -- I should get it today.

11 MR. ARONOWITZ: Okay.

12 JUDGE STEINBERG: But I have not gotten anything.

13 MR. ARONOWITZ: You mentioned something on --

14 JUDGE STEINBERG: Oh.

15 MR. ARONOWITZ: -- the Bureau of something of nine
16 -- ah, 5-13. Or did I mis- --

17 JUDGE STEINBERG: I do not remember.

18 MR. ARONOWITZ: -- I might have misheard you.

19 JUDGE STEINBERG: The motion to enlarge was filed
20 May 8. The supplement was filed yesterday, the 19th. The
21 due date would be June 3. If you want to supplement your
22 response or if you want to withdraw your comments --
23 whatever you want to do is okay.

24 While we are talking about pleadings, I want to
25 you to please have -- if you file something, please send me

1 a courtesy copy. Either hand-deliver it or mail it or, in
2 the Bureau's case, they can e-mail it to me. Or if anybody
3 else wants to e-mail it to me, that is fine.

4 I will give you my e-mail address later; or -- it
5 is ASTEINBE -- A-S-T-E-I-N-B-E -- at FCC.GOV.

6 We have been having problems -- problems of not
7 receiving Secretary-stamped copies of documents that were
8 filed. For instance, in this case, I have no
9 Secretary-stamped copy of a couple of the notices of
10 appearance. Of Universal's notice of appearance, I do not
11 have a Secretary-stamped copy. Of Monticello Mountaintop's
12 notice appearance. All I have is the courtesy copy.

13 In one case, which was particularly embarrassing
14 -- it involved a conduit attachment case -- I got a call one
15 morning from Peggy Green, who, you may all remember, in her
16 previous existence, as a member of the Review Board -- she
17 represented the Common Carrier Bureau.

18 And I got a call one day that said, have you ruled
19 on the settlement agreement that was filed in this case? I
20 said, "What settlement agreement?" Oh, a settlement
21 agreement was filed a full two months before the phone call.
22 Responsive comments were filed by everybody. Nobody sent me
23 a courtesy copy of anything. And I had not received a copy
24 of anything from the Secretary's Office. Needless to say,
25 that was terribly embarrassing.

1 And so, if you can all please make sure I get
2 courtesy copies of stuff, then at least I will know to look.
3 And I would appreciate that.

4 Okay, in my order prior to prehearing conference,
5 I directed counsel for the parties to meet to discuss
6 certain matters. Was a meeting held?

7 MR. ALAN NAFTALIN: Yes.

8 JUDGE STEINBERG: Okay. Does somebody want to
9 report to me what happened?

10 MR. ARONOWITZ: A meeting was held last -- last
11 Friday.

12 MR. RUSSO, MR. NAFTALIN AND MS. SCHMELTZER:
13 Thursday.

14 MR. ARONOWITZ: Thursday, excuse me. And we met
15 for the purpose of trying to put together a proposed
16 schedule. We tentatively agreed to a schedule and, later in
17 the day, I forwarded another proposed schedule. So, I am
18 not sure whether everybody is in agreement with my schedule,
19 which basically had a hearing commencing on October 7, and
20 varying deadlines between now and then. That's my
21 recollection of the meeting.

22 JUDGE STEINBERG: Okay.

23 MR. RILEY: Your Honor? I -- Mr. Aronowitz must
24 not have received a letter I sent to him on Friday, in which
25 I responded to his proposed schedule and indicated that --

1 Did you receive a --

2 MR. ARONOWITZ: Yes, I did.

3 MR. RILEY: Oh, okay.

4 MR. ARONOWITZ: And then -- and I don't think
5 there was agreement with my proposed schedule.

6 MR. RILEY: That's right.

7 JUDGE STEINBERG: Well, I have got a schedule, so
8 I do not think your schedule is going to matter.

9 MR. ARONOWITZ: Okay.

10 JUDGE STEINBERG: What I was concerned with is,
11 stipulation of uncontested facts. I do not see why
12 everybody cannot get together and stipulate a large chunk of
13 the facts. There is a lot of background recited in the
14 hearing designation order and I cannot possibly see how a
15 lot of that background can be contested.

16 And I think it would save enormous amounts of time
17 if you all got together and worked out a stipulation that
18 everyone could live with, as to at least how this case came
19 to be where it is today. What the agreements were. What
20 the letters were. What the responses were.

21 Now, if, for instance, Universal, wants -- says,
22 "I want this fact in," and Mr. Turro says, "I don't want
23 this fact in." Well, leave that fact out and we will
24 litigate that one fact, but not the whole thing.

25 Any thoughts on that? Yes, sir.

1 MR. ALAN NAFTALIN: Your Honor, two parts. One
2 is, I think we're going to find that the key facts are not
3 -- are very much in dispute. For example, we know that --
4 we know that an inspector went to the station on -- on
5 certain dates. What he says he found -- what he is reported
6 as saying he found does not jibe with my understanding of
7 the facts.

8 JUDGE STEINBERG: Okay, well, I am not talking
9 about stuff like that.

10 MR. ALAN NAFTALIN: Well -- well --

11 JUDGE STEINBERG: And that, obviously -- he is
12 going to have to be put on the stand and grilled.

13 MR. ALAN NAFTALIN: Well, my -- my theory, my
14 approach to the idea of agreeing on facts is, you get your
15 discovery and then you agree on the facts.

16 JUDGE STEINBERG: That is fine.

17 MR. ALAN NAFTALIN: And, because then, everybody
18 knows, really, what the facts are. And I think we can agree
19 on a great deal, once we know what the discovery is.

20 JUDGE STEINBERG: Okay. No, that is fine, as long
21 as you working toward that end.

22 MR. ALAN NAFTALIN: Yes. And that leads to one
23 question that is at the heart of -- is at the heart of one
24 part of the scheduling issue for me. And that is, how do we
25 find out what the Bureau -- what the information is that the

1 Bureau has?

2 JUDGE STEINBERG: Okay, we will get to that later.

3 MR. ALAN NAFTALIN: Okay.

4 JUDGE STEINBERG: There are ample ways for you to
5 find out.

6 MR. ALAN NAFTALIN: Good.

7 JUDGE STEINBERG: And I think you are to entitled
8 to find out.

9 Any discussion on the submission of the parties'
10 direct cases in writing? Yes, sir.

11 MR. ALAN NAFTALIN: I can't agree to it
12 completely. I can agree to it from -- almost completely, I
13 think, with, again, one reservation. The Bureau has the --
14 has the burden of going forward. If we have to make an
15 exchange -- our -- our -- the proposal that we made last
16 Thursday was -- was that the, ah -- it was that Turro and
17 that Monticello file their cases after, a couple weeks
18 after, the Bureau's case.

19 If that were the case, we could do a great --
20 almost all of it, I think, in writing. If we don't know
21 what the Bureau's case is when our thing is coming up, I
22 don't see how we can agree to that, because we won't know
23 what we have to deal with.

24 MR. RILEY: I would, Your Honor, say for
25 Monticello Mountaintop as well, that's our view of the

1 situation.

2 With respect to the order to show cause against
3 Monticello Mountaintop, the Bureau has the burden of going
4 forward and the burden of proof. Without knowing, in
5 advance, what the Bureau's factual contentions are, we
6 simply can't prepare a direct written case.

7 JUDGE STEINBERG: Okay, I can understand that.

8 Is Universal going to put on a direct case? You
9 do not have any burdens, but if --

10 MR. HELMICK: We have no burdens. I think if we
11 put on any kind of a case, that it more than likely will be
12 on rebuttal.

13 JUDGE STEINBERG: Okay. Now, let us get to
14 discovery. Did you talk about discovery at the meeting?

15 MR. ALAN NAFTALIN: Yes, we did, Your Honor, and
16 -- we -- the proposal that was made last Thursday allowed
17 for discovery in sequence in such a way that you get the
18 answers to interrogatories and you get the document
19 production before you start -- before you have to start your
20 depositions, on the theory that that's the -- the most
21 efficient way to go about it, the most complete way.

22 The Bureau's proposal compresses that a bit, so I
23 don't think we'll be able to do that. And that's one of the
24 questions for you to decide, I think.

25 JUDGE STEINBERG: Okay.

1 MR. ARONOWITZ: Excuse me, Your Honor.

2 JUDGE STEINBERG: Yes, sir.

3 MR. ARONOWITZ: And, in fact, in the Bureau's kind
4 of tightened schedule, the Bureau has kept in mind that
5 sequential form of discovery. It's just a lot quicker.

6 JUDGE STEINBERG: You know, when I -- no, I will
7 not say that now.

8 Discovery against the Bureau has to be by
9 interrogatory initially.

10 MR. ALAN NAFTALIN: Yes.

11 JUDGE STEINBERG: So, I do not have any problem
12 with you -- I do not have any problem. I mean, there is
13 nothing I can do to prevent you from using interrogatories
14 against the Bureau, because that is what the Rules
15 contemplate.

16 When you get your answers, then you might want to
17 depose people. And, you know, you have to go through me --

18 MR. ALAN NAFTALIN: And then the Commission.

19 JUDGE STEINBERG: And then the Commission. And I
20 have no problem with you making a showing to me. I think
21 you can easily meet -- given the facts here -- namely, a
22 Commission employee went out and did an inspection. And a
23 large part of the allegations are based upon that
24 individual's findings. I think you ought to be entitled to
25 depose him.

1 MR. ALAN NAFTALIN: Yes. He never issued a report
2 publicly, so that we don't know what --

3 JUDGE STEINBERG: Yes, well, I do not know if you
4 are entitled to get the report. And I do not have any
5 control over that, either. To get written documents from
6 the Commission, you have got to proceed under the Freedom of
7 Information Act. And --

8 MR. ALAN NAFTALIN: And they will turn out to be
9 investigative documents, I'm sure.

10 JUDGE STEINBERG: That is not my call.

11 MR. ALAN NAFTALIN: I understand.

12 JUDGE STEINBERG: However, where something is my
13 call, and that is, they have, I guess, informants? The HDO
14 mentions a number of people that gave sworn statements,
15 contradicting statements that were given by Monticello
16 Mountaintop and Mr. Turro.

17 MR. ALAN NAFTALIN: Yes.

18 JUDGE STEINBERG: And, under the Jenck's Rule,
19 they have to give you copies of those written statements.
20 It is -- what rule is it? One-point-three-sixty-two, of the
21 Commission's Rules, which provides that they have to give
22 you copies of their written statements after the direct
23 testimony of those individuals.

24 Now, I do not see that I have got the authority to
25 waive that rule. Now, I do not know, maybe you may know

1 something different. But I think that if they put an
2 informant on and the informant testifies, and then they hand
3 over to you their statements, I would have no problem with
4 you taking as long as you need to prepare for the
5 cross-examination of that witness. And I hate to suggest
6 it, but if you want to take the deposition of that person at
7 that time, I might let you do that. I am not saying that I
8 will, but I might consider it, depending on how long a delay
9 there is going to be.

10 So, it might be better if the Bureau just hands
11 over those statements initially.

12 MR. ALAN NAFTALIN: Right.

13 JUDGE STEINBERG: But that is up to the Bureau.

14 MR. ALAN NAFTALIN: All of which suggests, also,
15 that we need some time between the Bureau's direct case and
16 our -- our case.

17 JUDGE STEINBERG: Yes, I had not -- you know,
18 frankly, I had not thought of that when I was putting
19 together my schedule. And it makes great sense to me to do
20 it that way. We can talk about that later.

21 I mean, that is how to get stuff --

22 MR. ALAN NAFTALIN: Yes.

23 JUDGE STEINBERG: -- from the Bureau. And there
24 is a Scripps-Howard case. Are you familiar with that one?

25 MR. ALAN NAFTALIN: Yes.

1 JUDGE STEINBERG: That you should look to. And
2 that -- that basically says you have to go through me to get
3 to the deposition of the Commission people. As soon as you
4 -- you know, the sooner you do that, the sooner you are
5 going to get rulings.

6 MR. ALAN NAFTALIN: Yes, and I don't know how long
7 it take between you and -- after you just rule until the
8 Commission rules.

9 JUDGE STEINBERG: I do not know. There was one --
10 I think I brought it with me -- that the General Counsel
11 did. Actually, he turned him down, because they went
12 directly -- it came out a few days ago.

13 MR. ALAN NAFTALIN: Yes, I saw it.

14 JUDGE STEINBERG: Mobile Media. Where they filed
15 -- the motion for leave to depose was filed on May 6 and the
16 order was released on May 9. So, that is pretty --

17 MR. ALAN NAFTALIN: I don't think that's usually
18 the case, though.

19 JUDGE STEINBERG: Well --

20 MR. ALAN NAFTALIN: This -- this -- that
21 particular case is under a Commission order to get
22 everything --

23 JUDGE STEINBERG: Yes.

24 MR. ALAN NAFTALIN: -- done in six months.

25 JUDGE STEINBERG: Well, we can see what we can do.

1 MR. ALAN NAFTALIN: Yes.

2 JUDGE STEINBERG: I am not going to sit on it for
3 weeks and weeks.

4 MR. ALAN NAFTALIN: Good. Thank you.

5 JUDGE STEINBERG: And in terms of document
6 discovery, I think you should get most of everything that
7 they have. But I do not have any control over the Freedom
8 of Information Act.

9 But I know that when I was in the Bureau, anytime
10 we got one of those, we basically -- we dreaded those,
11 because there are strict time tables and lists and indexes.
12 And we just used to say, "Here's the box of everything we
13 have. Take it. We don't have anything more. And so, don't
14 bother me with the Freedom of Information Act." And, you
15 know, that worked. Okay. But that was in prehistoric
16 times.

17 MR. ALAN NAFTALIN: What we have been talking to
18 the Bureau about the possibility of just volun- -- doing it
19 voluntarily, but I think their position is that -- that we
20 have to go through -- as a procedural matter, we have to go
21 through the process.

22 JUDGE STEINBERG: Well, whatever they want to do
23 is up to them.

24 MR. ALAN NAFTALIN: Yes.

25 JUDGE STEINBERG: And I do not have any control

1 over that. Okay, any -- oh, let me just see. I just wanted
2 to say, with respect to discovery generally, I expect
3 everybody to make a good faith attempt to work out your
4 differences and to compromise with one another when
5 compromise is appropriate. I do not expect you to come to
6 me for a ruling unless you have absolutely hit a brick wall.
7 I do not want you to come to me for a ruling on a routine
8 basis. Just work it out. If it is impossible to work it
9 out, then come to me for a ruling.

10 And, I should tell you, I believe in broad
11 discovery. That if you opponent has got the information and
12 they might use it, give it up. Because it avoids surprises
13 and it is only fair to the other side.

14 Any questions on that, or any other discovery
15 matters we need to do?

16 Ms. Schmeltzer? Why don't you note for the record
17 who you are and why you are here?

18 MS. SCHMELTZER: Kathryn Schmeltzer, of Fisher
19 Wayland Cooper Leader & Zaragoza. And I represent Gene
20 Blabey and Carol Montana, who are referenced in the
21 designation order as potential witnesses in this matter.

22 And I just wanted to note, Your Honor, my
23 witnesses are perfectly willing to be deposed. They would
24 prefer to come to Washington and have one deposition -- I
25 mean, have separate depositions, but come to Washington at

1 one time so that everyone could depose them at that time.

2 The reason for that is, I realize that they could
3 select to be deposed at their city of residence, which is in
4 New York, but I'm here in Washington, and they have
5 indicated to me, both -- that they would both prefer to come
6 to Washington for deposition.

7 JUDGE STEINBERG: Okay, if you can accommodate the
8 two witnesses, please do so. If you cannot, then I guess I
9 will have to make a decision about that. But, thank you.

10 MR. SCHMELTZER: And the only other accommodation
11 we would request is, Ms. Montana is scheduled to go in for
12 some surgery later this week. And, depending on the outcome
13 of the surgery, there might need to be some follow-up work
14 at the hospital. And we would just desire to accommodate
15 her schedule.

16 JUDGE STEINBERG: Okay. Now, anything else on
17 discovery? (Brief silence.) Hearing nothing, we will go to
18 the next thing I have on my agenda.

19 I hate to bring it up, but I have to. Has anybody
20 thought of the option of distress sale? I took you
21 surprise, huh?

22 MR. ARONOWITZ: I have.

23 MR. HELMICK: I have, too, Your Honor.

24 JUDGE STEINBERG: Well, I just want to just
25 mention that. The option, I guess, is there. And you might

1 want to consider it, or you might not want to consider it.
2 But I just thought I would bring it up. Any comments on
3 that?

4 MR. RILEY: If Mr. Helmick's thought of it and his
5 client wants to sell, we may have a buyer.

6 MR. RUSSO: Your Honor, it's funny you should
7 mention it.

8 MR. ALAN NAFTALIN: From the point of view of
9 having the hearing, what is your -- do you have a deadline
10 on that?

11 JUDGE STEINBERG: Do you mean for distress?

12 MR. ALAN NAFTALIN: Yes.

13 JUDGE STEINBERG: Um --

14 MR. ALAN NAFTALIN: Ordinarily, those things are
15 supposed to be in place of hearings.

16 JUDGE STEINBERG: You can -- what is it? I have
17 not read it in a long time, but I think, once the hearing
18 commences, no distress. Up to the time that I say, "This is
19 the commencement of the hearing in MM Docket Number" --

20 MR. ALAN NAFTALIN: Yes.

21 JUDGE STEINBERG: -- whatever this is, up to that
22 point, you would have the option -- to elect. I think that
23 is the -- to the best of my recollection, that is the way it
24 works.

25 MR. RILEY: Your Honor, I had not thought of it,

1 but since you've raised it, who are potential purchasers in
2 a distress sale?

3 JUDGE STEINBERG: That is for you guys to figure
4 out.

5 MR. RILEY: There's no particular class of
6 individuals that are potential purchasers?

7 JUDGE STEINBERG: Well, it is called a minority
8 distress sell.

9 MR. RILEY: Yes, we know.

10 JUDGE STEINBERG: Minority ownership --

11 MR. RILEY: I wonder if that's permissible any
12 longer?

13 JUDGE STEINBERG: I do not know of any cases that
14 overturned it. And I think the interesting case would be if
15 you got a non- -- if you tried to sell to a non-minority at
16 a distress sale price. And then you went in and said, under
17 Adarand and under this and under that, but that is -- I do
18 not do that.

19 That is -- somebody else has that. I think that
20 is the Bureau. The Bureau has delegated authority to do
21 that. But if you want to make some law. But, then, that is
22 not what lawyers are paid to do. I just thought I would
23 throw that out and say that that was one of the options.

24 Now, another thing is, I do not know if you can
25 distress sale an FM translator. I do not know, frankly. I

1 do not see why you cannot, but, then, there might be a
2 reason that I have not thought of. But, then, I do not
3 spend my nights thinking about whether or not you can
4 distress sale an FM translator. Okay, I just thought I
5 would throw that out.

6 Now, one other matter I want to talk about before
7 we talk about the dates, and that is, I am thinking of
8 limiting the cross-examination of the witnesses to basically
9 one lead counsel. We have four parties in this case and I
10 do not see that it makes sense to have three people
11 cross-examining the same witness.

12 If I do not do that, it might be that I will say,
13 okay, we will have one designated to be the primary
14 cross-examiner and the others can sort of play mop-up
15 person. You cannot cover the same ground that the primary
16 did, but you can ask different questions in different areas.
17 Because I do not see that it makes much sense to have three
18 people asking the same questions. You might want to think
19 about that and talk about that among yourselves.

20 I am not prepared to say, right now, we are going
21 to do it one way or we are going to do it another way.

22 MR. ALAN NAFTALIN: I have only one immediate
23 thought about that, and let's take the inspector as an
24 example. If he inspected the Monticello station, which,
25 apparently, he did, and he inspected the Turro facility,

1 which he apparently did, and he's got testimony on both of
2 those subjects, I don't think it would work for Mr. Riley to
3 cross-examine him and I don't on -- on what he did about the
4 Turro facility and --

5 JUDGE STEINBERG: Yes, in a situation like that,
6 you might want to basically split the cross-examination, and
7 one will cover one -- and if you want to do that, too, if
8 one counsel wants to take one area, one discrete area and
9 cross-examine and another one takes another discrete area
10 and cross-examine, with very little or no overlap.

11 MR. ALAN NAFTALIN: Yes.

12 MR. RILEY: One other point, Your Honor. Although
13 there were four parties, the alignment is --

14 JUDGE STEINBERG: I know.

15 MR. ALAN NAFTALIN: -- such that you're unlikely
16 to have more than two attorneys --

17 JUDGE STEINBERG: Yes.

18 MR. ALAN NAFTALIN: -- conducting cross of any one
19 witness.

20 JUDGE STEINBERG: Yes.

21 MR. ALAN NAFTALIN: Perhaps Mr. Aronowitz and
22 Mr. Russo or Mr. Helmick with a witness being crossed, it
23 would not be in a compara- -- as in a comparative case,
24 where you have seven or eight applicants.

25 JUDGE STEINBERG: Right. Right, I had thought of

1 that, also. But, then, you know, the Bureau is in a little
2 different position. They have the burden on one set of
3 issues, but then they are sort of the neutral third party on
4 another set of issues.

5 So, they might be aligned with -- wait a minute,
6 so Mr. Riley -- I read Mr. Riley's body language, and let me
7 go check it, about my last statement. Oh, okay.

8 Yes, the Bureau has the burden of proceeding under
9 both sets of issues. So, I guess the alignment would be --
10 you know, would be that, the way Mr. Riley suggests. You
11 see, I am good at reading body language.

12 Okay, anything further before we go off the record
13 and talk about dates? Okay, we will go off the record.

14 (Whereupon, at 9:30 a.m., the proceeding was
15 briefly recessed.)

16 (Whereupon, at 9:37 a.m., the proceeding was
17 resumed.)

18 JUDGE STEINBERG: We are back on the record.

19 MR. ALAN NAFTALIN: I have one question.

20 JUDGE STEINBERG: Yes, sir.

21 MR. ALAN NAFTALIN: I'm finding that --

22 JUDGE STEINBERG: Oh, is this off the record or on
23 the record?

24 MR. ALAN NAFTALIN: Off, because I --

25 JUDGE STEINBERG: Okay, let us go off.